

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**NELSON RIVAS ALVAREZ,**

**Petitioner,**

**v.**

**Civil Action No. 2:07cv74**

**WARDEN JOE DRIVER,**

**Respondent.**

**ORDER**

It will be recalled that on June 20, 2008, Magistrate Judge John S. Kaull filed his Report and Recommendation, wherein the parties were directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. Petitioner filed his objections to the Magistrate Judge's Report and Recommendation on July 7, 2008.

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the Petitioner in his Petition, filed pursuant to 28 U.S.C. §2241, wherein Petitioner claims the Respondent has withheld a Bond in his underlying criminal action, were thoroughly considered by Magistrate Judge Kaull in his Report and Recommendation, as was the Respondent's Motion to Dismiss and/or Change of Venue. Moreover, the Court, upon an independent de novo consideration of all matters now before it, is of the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action.

Upon review of the Petitioner's objections, the Court finds that the Petitioner has not raised any issues that were not already fully considered and addressed by Magistrate Judge Kaull. As more fully set forth in Magistrate Judge Kaull's Report and Recommendation, the Court finds that the Petitioner's claims are not properly raised under §2241, nor would they be properly raised under §2255 if permitted to be transferred. Therefore, it is

**ORDERED** that Magistrate Judge Kaull's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

**ORDERED** that Respondent's Motion to Dismiss and/or Change of Venue (Docket #13) be Granted in part. That is, the Respondent's Motion to Dismiss shall be, and the same hereby is, **GRANTED**, and that the Respondent's Motion to Change Venue shall be, and the same hereby is, **DENIED**. It is further

**ORDERED** that the Petitioner's Application for Writ of Habeas Corpus pursuant to 28 U.S.C. §2241 shall be, and the same hereby is, **DENIED** and **DISMISSED with prejudice**. It is further

**ORDERED** that the above-styled action shall be **STRICKEN** from the docket of this Court. It is further

**ORDERED** that the Clerk shall enter judgment for the Respondent. It is further

**ORDERED** that, if a party should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed in forma pauperis from the United States Court of Appeals for the Fourth Circuit.

**ENTER:** July 25, 2008

/s/ Robert E. Maxwell  
United States District Judge